Forbes

Apr 15, 2020,08:57pm EDT
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Ten Things We Need To Know About Paycheck Protection Program Loan Forgiveness

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, a $2.3 trillion relief package designed to help individuals and businesses weather the economic damage caused by the COVID-19 pandemic.

The headliner of the CARES Act was the creation of the Paycheck Protection Program (PPP), a new loan package designed to put $350 billion into the hands of small businesses for use in paying employee wages and other critical expenses over the coming weeks and months. As of the morning of April 15th, nearly $250 billion in cash had made its way to over one million small businesses, and Congress had already begun negotiations on a second round of PPP funding.

Getting a quarter of a trillion dollars to small businesses in less than two weeks is no small feat, and predictably, borrowers have encountered no shortage of procedural challenges along the way. When the program initially opened on April 3rd, many banks, including large national institutions like Wells Fargo, were not prepared to accept applications. Among those banks that were ready to go, many shut the door on any applicant with whom they didn't have an existing banking relationship. And when applicants could find a willing lender, they quickly learned that small ambiguities in the legislative text of the CARES Act led to BIG problems in computing the maximum loan proceeds.

You can read about those problems here, but by the time you're finished with that article, it's likely that nearly all of the first round of PPP funding will be committed. As a result, it's time to turn our attention to the next round of potential problems—problems that promise to be far more painful for borrowers than any headaches they endured throughout the application process.

After all, the reason over one million businesses rushed to the bank on April 3rd to grab a PPP loan was *not* because they were eager to saddle their struggling enterprises with more debt. Rather, the idea is that these PPP loans are loans in name only; once a borrower receives the funds, the amount spent over the next 8 weeks on payroll, mortgage interest, rent and utilities is eligible to be *completely forgiven.* Even better, while a cancellation of a borrower's debt typically creates taxable income under Section 61(a)(11) of the Internal Revenue Code, the CARES Act provides that forgiveness of a PPP loan is completely tax free.

Of course, any portion of a PPP loan that isn't forgiven must be repaid over two years – after a six-month deferral period – at an interest rate of 1%.

This all seems simple enough. But as stated earlier, small ambiguities in the language of the CARES Act governing the computation of loan proceeds created a great deal of confusion throughout the application process. Well, I've got news for you: there are also BIG ambiguities governing the computation of a borrower's debt forgiveness.

But maybe, just maybe, if we anticipate these issues NOW, the powers that be will fill in the gaps sooner rather than later, giving borrowers the guidance they need to understand what part of the PPP loan is eligible for forgiveness, and what part they'll have to repay.

But before we can identify the holes in the legislative text, we have to, you know…*understand the legislative text*. Here's how it's *intended* to work:

The CARES Act states that during the "covered period" – an 8-week stretch beginning on the date a PPP loan originates – the sum of the following "costs incurred and payments made" will be eligible for forgiveness:

- Payroll costs;
- Any payment of interest on any mortgage obligation (not including any prepayment of or payment of principal on a mortgage obligation) that was incurred before February 15, 2020,
- Any payment of rent under a leasing agreement in force before February 15, 2020,
- Any utility payment, including payment for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

As PPP borrowers learned the hard way during the application process, the critical term "payroll costs" is poorly defined. Unfortunately, it's a term we have to contend with again when determining forgiveness, so let's remind ourselves what is and is not considered a "payroll cost."

For a business with employees, payroll costs are equal to the sum of:

- Salary, wage, commission, or similar compensation; for a partnership, recent guidance from the SBA explains that payroll costs include not only guaranteed payments to a partner, but also any partner's share of income of the partnership subject to self-employment income. As discussed below, these amounts are subject to a per-employee or per-partner cap of $100,000.
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Payment required for the provisions of group health care benefits, including insurance premiums;

- Payment of any retirement benefit; or
- Payment of State or local tax assessed on the compensation of employees.

Payroll costs do NOT include:

- The compensation of an individual employee — or the self-employment income of a partner in a partnership – in excess of $100,000, as prorated for the covered period;
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code during the covered period;
- Any compensation of an employee whose principal place of residence is outside of the United States;
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act; or
- Qualified family leave wages for which a credit is allowed under section 7003 of that same Act.

A recent SBA FAQ clarified several points of confusion surrounding the items that are excluded from payroll costs, and this clarification should apply equally when determining the costs eligible for forgiveness. First, the $100,000 per-employee limit applies only to cash compensation, salary or wages. Additional payroll costs allocable to the employee, including employer contributions to defined-benefit or defined-contribution retirement plans, payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and payment of state and local taxes assessed on compensation of the employee may be added to the $100,000 of maximum salary in computing payroll costs.

For a self-employed taxpayer, recent guidance defines payroll costs in a purely mechanical fashion as the net self-employment income reported on a 2019 Form 1040 Schedule C, Line 31.

Putting it all together, a business has eight weeks to spend PPP loan proceeds on payroll cost, mortgage interest, rent and utilities. That amount will be eligible for forgiveness. But there’s a catch. Well, two catches, really.

With most areas of the country continuing to be subject to a shelter-in-place order, the reality is that many businesses have closed their doors. As a result, business owners who rushed to grab a PPP loan will be faced with the realization that to achieve full forgiveness, they will need to pay employees NOT to work. And given the recent increase to unemployment pay, those same employees may prefer not to be paid by their employer, as in many cases, collecting unemployment will prove more lucrative. Given this reality, many business owners were hopeful that they would have flexibility in choosing their 8-week covered period, allowing them to wait out the shelter-in-place order, get their employees back to work, and maximize the payroll that would be incurred during that stretch, and by extension, the subsequent debt forgiveness.

That won't be the case. The SBA recently clarified that the 8-week period begins on the date the borrower receives the disbursement of the loan, and the bank is required to make the disbursement within 10 days of loan approval. As a result, a business that took out a PPP loan in the past week has to start the clock immediately upon receipt of the funds, regardless of whether their business has even restarted operations.

I know what you're thinking: "that's fine…if I don't have employees to pay, I'll just use the proceeds to make my huge rent payment in April and May, and *that* will be forgiven." And if you read the CARES Act – and only the CARES Act — you would be correct in that belief.

But…the SBA decided to change the rules. In recent guidance, the SBA stated that no more than 25% of the forgivable amount of a PPP loan can be attributable to non-payroll costs. This is bad news for business owners with small payroll – or who laid off workers prior to taking out the PPP loan – and large rent and utility obligations.

Example. X Co. borrowed $100,000 in PPP proceeds on April 10, 2020. Over the next 8 weeks, X Co. spent $50,000 on payroll costs and $40,000 on rent and utilities. X Co.'s loan forgiveness is limited to $66,667, $50,000 of payroll costs and $16,667 of rent and utilities.

Unfortunately, this 25% limitation means that unless a business actually INCREASES its payroll costs over the 8-week covered period relative to its 2019 pace, full forgiveness isn't possible.

Assume X Co. had $3.6 million in payroll costs in 2019. The maximum PPP loan proceeds are $750,000. Assume further that by some minor miracle, X Co. continues its payroll during the covered period at the EXACT SAME PACE as it paid out in 2019. During the 8 weeks, X Co. will pay out $553,000 in payroll costs. It will use the remaining proceeds to pay rent and utilities. All is forgiven, right?

Wrong. Because the SBA is limiting the forgivable portion of non-payroll costs to 25%, the maximum amount of loan forgiveness for X Co. is $738,000 ($553,000/75%). As a result, at a minimum, $12,000 of the loan will not be forgiven. A small price to pay for three-quarters of a million dollars of tax-free money, perhaps, but the SBA's math was curious nonetheless.

OK, at this point, I think we understand the basics of:

- 1. When the 8-week covered period begins, and
- 2. The general nature of the expenses during that 8-week period that will be eligible for forgiveness.

Now, let's dive into everything we DON'T know about forgiveness. Ten things, to be exact.

#1: What does it mean when it says "costs incurred and payments made" within the 8-week covered period will be forgiven?

The requirement that only "costs incurred and payments made" within the 8-week period will be forgiven may seem innocuous, but it has the potential to create a host of problems.

There are two possible interpretations of this critical phrase. The first is to focus on the use of "and" rather than "or" in the phrase, and assume this requires any expense to be BOTH incurred AND paid within the 8-week period. This, as you could imagine, would cause some problems. Say a borrower gets their PPP loan on April 15th – under this interpretation, they wouldn't be able to use the funds to pay payroll attributable to March, because though the costs weren't "incurred" during the 8-week period beginning with the receipt of the proceeds. Or, at the other end of the date range – the same borrower wouldn't be able to prepay June rent at the end of May, before the expiration of the 8-week period, because the rent wasn't incurred until after the period had expired.

The other interpretation is more favorable, but perhaps unreasonably so. Here, we focus on the fact that the language does not require *any particular expense* to be both paid and incurred, but rather accommodates BOTH "costs incurred" AND "payments made" during the 8-week period. In this case, the application gets far more expansive. Presumably, an April borrower could have May rent forgiven that wasn't paid until June, because the cost was incurred prior to the end of the 8-week period. Similarly, the same borrower could pay amounts attributable to costs incurred before and after the period, and both would be eligible for forgiveness because the amounts were paid within the covered period. And while allowing for prepayment of expenses may appear illogical, remember that the CARES Act specifically bars prepayment of mortgage interest during the covered period, but only mortgage interest.

Unless I just *really* overthink things, we're going to need some clarity on this. Or, as we'll discuss in #10, maybe no one will be checking the borrower's math.

#2. How do the two "covered periods" interact?

Section 1102 of the CARES Act provides that PPP loans are only available during the "covered period" of February 15 – June 30, 2020, and during that time, may only be used to pay payroll costs, mortgage interest, rent, utilities, and interest on other debt.

Then, Section 1106 provides that only amounts spent during the "covered period" are eligible for forgiveness. But for these purposes, the covered period is the 8-week period following the receipt of the loan proceeds.

Now, this may be a moot point given that the PPP funds will likely be gone by the time this publishes, but assuming a second or even third wave of funds become available, what happens to a borrower who receives a PPP loan on June 1st? The covered period for use of the funds ends on June 30th, but the covered period for forgiveness will end at in the last days of July. Will payments made post-June 30th be eligible for forgiveness?

#3. Are payments made with forgiven funds deductible?

This is a big one. Section 1106 of the CARES Act states that amounts forgiven on a PPP loan "shall be excluded from gross income." Easy enough. But Section 265 of the Internal Revenue Code provides that expenses "allocable to" tax-exempt income are not deductible; this prevents a “double dipping” of sorts, whereby a taxpayer would otherwise get both a deduction and tax-exempt income related to the same transaction or investment.

Historically, Section 265 has applied to items like interest expense incurred to generate tax-exempt interest income, but there’s no reason to believe it couldn’t apply to expenses paid with forgiven PPP proceeds.

In *Manocchio v. Commissioner*, an airline pilot paid for flight instruction and was ultimately 90% reimbursed under a federal program. The reimbursed payments were tax-exempt, leading the IRS to apply Section 265 and disallow any deduction related to the payment for the program.

Could the IRS apply a similar approach to forgiven PPP loans? Absolutely. After all, claiming deductions for amounts paid for by the federal government on a tax-free basis – and potentially generating a loss that can now be carried back to collect a refund of previously paid taxes – would be an extremely generous outcome.

But if an extremely generous outcome is what was intended, Congress could simply amend Section 265 to accommodate this situation. They’ve done it before, most notably in response to a previous Revenue Ruling that disallowed deductions of a minster of a church who received a tax-free housing allowance under Section 107.

Whatever the result, borrowers need guidance immediately.

#4. Can a business pay interest on non-mortgage debt during the covered period and have it forgiven?

If you read the entire text of the CARES Act (you did not), you’ll notice something curious: when listing “allowable uses” of PPP loan proceeds, in addition to payroll costs, mortgage interest, rent, and utilities, Section 1102 of the CARES Act allows a borrower to use the funds to pay “interest on any other debt obligations that were incurred before the covered period.”

But when you flip to Section 1106 of the Act, which details the items eligible for forgiveness, that final item is absent. Thus, it appears Congress will allow a borrower to use the funds to pay interest on a non-mortgage debt during the covered period, but won’t allow a borrower to have that amount forgiven. Is that intentional? If so, why? Borrowers will need clarity quickly.

#5. Can self-employed taxpayers have mortgage interest/rent/utilities forgiven, or can’t they?

You have to hand it to the SBA. It has done a remarkable job of providing answers to questions that only create more questions.

Just yesterday, we finally received guidance on how a self-employed taxpayer computes payroll costs, maximum loan proceeds, and the amount eligible for forgiveness.

As stated above, payroll costs for a self-employed taxpayer is a equal to the net self-employment income taken from Line 31 of a 2019 Form 1040 Schedule C. When determining forgiveness, however, the process of determining the payroll costs of a self-employed taxpayer is strictly mechanical: the lender will forgive 8/52 of the 2019 Line 31 income as "owner compensation replacement."

*Example. On A's 2019 Form 1040 Schedule C, she reported $120,000 on Line 31 as net profit. Her PPP loan proceeds are $20,833 ($120,000 limited to $100,000/12*2.5). In addition, she is entitled to forgiveness related to "owner compensation replacement" of $15,384 ($100,000/52*8).*

This is, to say the least, *different* from how we compute forgiveness for a business with employees. While the latter only have forgiven amounts SPENT during the 8-week covered period, a self-employed taxpayer gets automatic forgiveness during the period based not on anything that happens during that time, but rather based on the income the taxpayer earned in 2019.

But that's not the troubling issue. Page 11 of the newest Interim Final Rules appears to allow a self-employed taxpayer to have forgiven not just the "owner compensation replacement" amount, but also the same mortgage interest, rent, and utilities a business is entitled to. Which is what we'd expect, since that's what a business with employees is entitled to. So what's the problem?

Page 12; that's what. It's got a lot of people confused, and for good reason. Read what it says:

> **For individuals with self-employment income who file a Schedule C, the Administrator, in consultation with the Secretary, has determined that it is appropriate to limit loan forgiveness to a proportionate eight-week share of 2019 net profit, as reflected in the individual's 2019 Form 1040 Schedule C. Limiting forgiveness to eight weeks of net profit from the owner's 2019 Form 1040 Schedule C is consistent with the structure of the Act, which provides for loan forgiveness based on eight weeks of expenditures.**

Many people have reached out to me to ask if this means what it sounds like: that the ONLY forgiveness a self-employed taxpayer receives is 8/52 of the 2019 Form 1040 Schedule C Line 31. In response, I would tell you that if you read that paragraph in isolation, it's certainly reasonable to reach that conclusion. But when read in combination with page 11 and 13, I would argue that the additional costs – mortgage interest, rent, utilities – are still eligible for forgiveness, and that this one paragraph is the victim of sloppy drafting.

But I've been wrong before, so perhaps the SBA should clear this up.

#6: What are we doing about federal income tax withholding and payroll taxes?

Here we go again. The CARES Act states that payroll costs do not include "...taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code during the covered period." These taxes include federal income tax withholding on employee wages as well as the employer's and employees' share of Social Security and Medicare taxes.

This exclusion caused mass confusion during the application process, with some banks lending based on an employer's NET 2019 payroll, with others lending based on GROSS payroll PLUS the employer's share of payroll taxes. It's hard to blame the banks, however, as the paragraph made little sense when determining loan proceeds; after all, why would we reduce 2019 payroll costs for withholding and payroll taxes incurred in April, May, and June of 2020?

Eventually, the SBA reached the logical conclusion that *in determining loan proceeds*, this paragraph is to be ignored. In other words, the computation is based on gross payroll, unreduced by federal income tax withholding and the employees' share of payroll taxes, and not increased by the employer's share of payroll taxes. Fair enough.

But what now? Payroll costs for the covered 8-week period are defined in the same manner as payroll costs for the purposes of computing proceeds — does this mean that the intention of Congress was that while amounts could be loaned based on 2019 *gross* payroll, only *net* payroll during the covered period should be forgiven, thereby preventing the government from effectively paying itself the required payroll taxes for eight weeks?

That may have been the intent, but based on the SBA FAQ as it stands today, in computing forgiveness, payroll costs will also be gross. A footnote to the FAQ provides:

The definition of "payroll costs" excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages...Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

That's great and all, but I'd prefer something a bit more concrete than a footnote. Make it happen, SBA.

#7: Can a business have self-rental payments forgiven?

Many business owners that own real estate required for use in the business choose to hold the real estate in a separate legal entity and then rent the property to the operating business. These so-called "self-rentals" give rise to a host of tax issues, but at least at present, they don't seem to pose problems in the PPP context. The CARES Act – in allowing a business to pay rental expenses during the covered period and have those payments – subject to the 25% cap on non-payroll costs –

forgiven, do not differentiate between payments made to unrelated third parties and related entities. As you might imagine, this would encourage some businesses to temporarily increase the rental rates so as to maximize PPP loan forgiveness. We'll need to know soon if self-rentals are subject to additional safeguards.

In addition, we'll need to understand whether "rent payments" extend to payments for leased equipment, or merely to real estate. The CARES Act gives no reason to believe it's the latter.

#8: Can someone explain how we determine the required reduction in forgiveness amount if a business cuts employees?

As we've seen, computing the amount of a PPP loan that will be eligible for forgiveness is no simple task. But understand – once that amount is determined, it is not set in stone. To the contrary, the forgiveness will be reduced if a business either cuts employees or slashes salary during certain time periods.

In this question, we'll address the employee reduction problem. The CARES Act provides that the amount of loan forgiveness is reduced by multiplying the amount eligible for forgiveness by the quotient obtained by dividing:

- The average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by
- At the election of the borrower, either:
  1. The average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or
  2. The average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020.

If your employees dropped off from one of these time periods and now– and they likely did – you've still got a chance for full forgiveness. If a business reduces employees from February 15 through April 27, 2020, but eliminates that reduction by June 30, 2020, the reduced forgiveness is restored.

So if you're scoring at home:

- A business must measure its FTEs for each pay period during the 8-week covered period. Let's say its 20.
- It must then measure its FTEs for the period February 15 – June 30, 2019 or January 1 – February 29, 2020. Let's say it's 30 in both cases.

At this point, if the business were otherwise eligible for $100,000 of forgiveness, that amount would be reduced to $66,667 ($100,000 * 20/30).

But…the business must then measure:

- Its FTEs from February 15 – April 27, 2020. Let's say this is 25, and
- Its FTEs on February 15, 2020. Let's say this was 32.

Based on my read of the CARES Act, this 7-person reduction between February 15 and April 27, 2020 will be ignored if no later than June 30, 2020, the business has restored the employee levels to what they were on February 15, 2020 (32).

There's a lot to unpack here. First, a lot of people, including myself, first read the reduction formula as containing an error, interpreting it as requiring a reduction in forgiveness even if a business remained fully staffed. Upon reading #535, however, it finally clicked for me, and I think the language, while clumsy, is correct.

Next, the formula requires a business to determine its FTEs for each pay period falling within one of the many different months that are part of the formula, but provides no guidance on how to quantify FTEs. Presumably, it will require the standard approach of dividing the number of working hours for a pay period into the total hours worked.

Once you've got FTEs dialed, a business must compute the "average" FTE during the periods:

1. The 8-week covered period beginning with receipt of the loan proceeds;
2. February 15 – June 30, 2019 or January 1 – February 29, 2020; and
3. February 15 – April 27, 2020; and
4. February 15, 2020, and
5. Presumably from now until June 30, 2020.

If your FTEs in period 1 is less than 2 (whichever is lower), you've got a reduction in your forgiveness…UNLESS during period 5, you restore any reduction in employees that occurred during period 3 relative to date 4.

I can't be the only person that finds this formula to be incomprehensible. Why is forgiveness reduced if our staffing drops during the covered period relative to 2019 or the beginning of 2020, but restored if we replace employees lost during the period February 15 to April 27, 2020? What do you do in this fact pattern?

- X Co. had 20 average FTEs in 2019 and from January 1- February
- X Co. had 20 average FTEs in 2019 and from January 1- February 29, 2020.
- X Co. had 10 average FTEs between April 10, 2020 – the day it received PPP loan proceeds – and June 10, 2020, a period 8 weeks later.

- X Co. had 17 employees on February 15, 2020.
- During the period February 15 – April 27, 2020, X Co. had 12 average FTEs.
- On May 15th, X Co. rehires 3 people and is now at 15 FTEs.

What is the reduction in the forgiveness? Is it 10/20? Is there any restoration of the forgiveness? X Co. lost 5 employees between February 15 and April 27, 2020 but replaced 3 before June 30th. Is there any restoration of reduced forgiveness, or is restoration only allowable if ALL of the reduction is restored? And what if X Co. rehires all 5 people lost between February 15th and May 31st, but then drops another 10 in June?

And what are the limits on rehiring people? Can you rehire for a completely different position? For example, can a restaurant that fired 10 people during the covered period hire 10 painters/construction workers to renovate the place? Do temporary employees count? Can a business owner hire their spouse or children to bump up payroll costs and headcount?

I give up. You should too. We need guidance.

#9: How does the reduction in forgiveness caused by salary reduction work?

The amount of loan forgiveness is also reduced by the amount of any reduction in total salary or wages of any employee during the covered 8-week period who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay of more than $100,000. The reduction in forgiveness amount is required if the reduction in wages over the 8-week period is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

Wait a second…I'm not the smartest guy around, but I am familiar with the workings of the Gregorian calendar. A quarter is 12 or 13 weeks, depending on your purpose. The 8-week period is, well…8 weeks. This rule appears to be saying that if during the 8-week covered period you get paid less than 75% of what you did during the previous calendar quarter prior to the covered period, your forgiveness amount is reduced. But 8 is only 67% of 12; so if employee A earned $12,000 for twelve weeks in the previous calendar and $8,000 during the 8-week covered period, is the business required to reduce its forgivable amount by $1,000, the excess of the reduction ($4,000) over 25% of the $12,000 salary ($3,000)?

This obviously makes no sense. You know what else makes no sense? The CARES Act says the reduction is not required if it relates to any employee who, DURING ANY SINGLE PAY PERIOD in 2019, has annualized salary in excess of $100,000. So if an employee got a bonus during one pay period in 2019 that, when annualized, exceeds $100,000 in total pay, are they immune to this calculation?

Help us. Please.

#10: Who makes the call?

There was a serious “gold rush” feel to the PPP application process. Knowing that the loans were “first-come, first-served” and hearing that they would effectively become a tax-free grant led many to apply without fully understanding the procedural aspects of forgiveness.

Forgiveness is NOT guaranteed. Aside from having to meet the computational guidelines discussed above and below, the CARES Act provides that a borrower must submit to the lender an application, which must include a host of certifications and documentation verifying payments made. The CARES Act states that any borrower who fails to provide a complete application is not eligible for forgiveness.

The lender then has 60 days to make a decision on forgiveness. And while the CARES Act states that as long as the lender receives the required documentation and certifications from the borrower, the lender will not be subject to SBA enforcement action or penalties if it chooses to forgive the loan, one has to wonder how the forgiveness decision will play out in practice? As we saw with the application process, in the absence of guidance, every lender will come up with their own interpretation of key terms and computational formula, and just as was the case with the determination of maximum proceeds, some borrowers will win and some will lose.

Want proof? I just received a note from a client who was told by his bank – AFTER borrowing the PPP loan – that if the client did not use 75% of the loan proceeds on payroll costs during the covered period, NONE OF THE LOAN would be forgiven. Show me where the CARES Act or subsequent SBA guidance says that?

The only saving grace is that in all likelihood, the banks won’t be able to forgive these loans fast enough; they generally don’t want 1% loans sitting on their books. But that raises another question: since the banks DON’T want these on their books, what will they do with loans that can’t be forgiven. Earlier today, another contact sent me a note from a bank that stated that any PPP loan funds not used within 8 weeks for allowable purposes *must be immediately returned to the bank*.

If you’ve stuck with me this long (you have not), you appreciate the severity of the situation. We don’t know what costs are forgiven. We don’t know what will determine which costs are allowed — is it incurred, paid, or both? We don’t understand the time frames. We don’t know if we can deduct the expenses paid with forgiven dollars. We have no idea how to compute the reduction in forgiveness related to lost employees or reduced salaries, or how to restore that reduction if it occurs. And lastly, NONE of it may matter, because the banks are going to make the rules, and they don’t know what the hell they’re doing.

Other than that, we’ve got this all figured out.